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HIGH COURT OF CHHATTISGARH, BILASPUR

SINGLE BENCH-HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

SECOND APPEAL NO. 358 OF 2006

APPELLANT DEFENDANT	:	Alakhram
		VERSUS
RESPONDENTS PLAINTIFFS	:	Smt.Rajkunwar and Others

Post for Judgment: 9-04-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

SINGLE BENCH-HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

SECOND APPEAL NO. 358 OF 2006

APPELLANT DEFENDANT	:		Alakhram S/o. Tijauram Marar, Aged about 50 years, R/o Ambagarh Chouki, Tahsil-Chouki, District-Rajnandgaon (CG)
			VERSUS
RESPONDENTS PLAINTIFFS	:	1(A)	Smt.Rajkunwar Wd/o. Sagnuram, Aged about 60 years,
	:	1(B)	Smt. Shanti Bai D/o Late Sagnuram, Aged about 40 years
	:	1 (C)	Smt. Kunti Bai, D/o Late Sagnuram, Aged about 37 years,
		1 (D)	Ganesh Ram, S/o Late Sagnuram, Aged about 37 years,
		1 (E)	Santram S/o Late Sagnuram Aged about 33 years,
		1 (F)	Santri Bai, D/o Late Sagnuram, Aged about 30 years,
		1(G)	Parmila Bai, D/o Late Sagnuram, Aged about 28 years.
			All above R/o. Village-Ambagarh Chouki, Tahsil-Ambagarh Chouki, District-Rajnandgaon (CG)
RESPONDENTS DEFENDANTS		2.	Pardeshnin Bai, W/o Rahipal Marar, Aged about 45 years, R/o Village Kanhe, Tahsil- Ambagarh Chouki, District-Rajnandgaon (CG)
		3.	Sonsir Bai, W/o Munna Yogi, Aged about 40 years, R/o- Ambagarh Chouki, District-Rajnandgaon (CG)
		4.	Ramkali Bai, D/o Tijau Marar, Aged about 35 years, R/o Village-Gidarri, Tahsil-Dongargaon, District-Rajnandgaon, (CG)
		5.	Temlal @ Temu S/o Fakir, Aged about 21 years (now),
		6.	Hemlal, S/o Samaru, Aged about 18 years (now), Both are R/o Village-Bendakodo, Tahsil-Mohla, District-Rajnandgaon (CG)
		7.	State of Madhya Pradesh (Now Chhattisgarh), Through: Collector, Rajnandgaon, (CG)

Present:-
Shri Manoj Paranjpe, Counsel for the appellant.
Shri Akhil Agrawal, Panel Lawyer for the Respondent No.7/State.

JUDGMENT
(Delivered on 09.04.2007)

The appellant/defendant is aggrieved by the dismissal of his appeal vide judgment and decree dated 24-06-2006 passed in Civil Appeal No.45-A/2003 by the District Judge, Rajnandgaon whereby the judgment and decree passed in Civil Suit No.16-A/1988 on 04-08-2000 by the Civil Judge Class-I, Ambagarh Chowki decreeing the plaintiff's suit for declaration of title and permanent injunction was affirmed.

(2) It is not disputed that Hironda Bai was the owner of the suit land i.e. Khasra No.206/2 area 1.85 acres, Khasra No.247/3 area 0.07 acres and the house constructed on Khasra No.247/3 situated in Ambagarh Chowki, Tahsil-Mohalla, District-Rajnandgaon (hereinafter referred to as " Suit Property"). It is also not disputed that the deceased Sagnu Ram was the brother-in-law of Hironda Bai.

(3) Sagnu Ram instituted Civil Suit No.16-A/1988 for declaration of his title and permanent injunction against the defendants on the ground that Hironda Bai had executed a registered will of the suit properties in his favour on 27-08-1984. The defendants had in collusion with the Revenue Officials obtained an order of mutation of their names over the suit property on 17-02-1988 which had cast a cloud over his title.

(4) The defendants resisted the suit pleading that the house situated on the suit property were constructed by them and that Sagnu Ram taking advantage of the illness of Hironda Bai got a forged will executed by obtaining thumb impression of Hironda Bai while she was unconscious. It was also pleaded that on an earlier occasion i.e. on 08-07-1985 Hironda Bai had executed a will in favour of Alakh Ram and Jugri Bai.

(5) The learned Civil Judge Class-I, Ambagarh Chowki, recorded a finding that execution of the last will on 27-08-1984 by Hironda Bai was legally

established and therefore granted a decree for declaration of title and permanent injunction in favour of the plaintiff Sagnu Ram.

(6) Being aggrieved by the aforesaid order, Alakh Ram, the defendant No.1 preferred Civil Appeal No.45-A/2003 before the District Judge, Rajnandgaon. During pendency of this appeal, Sagnu Ram died and his legal representatives were brought on record. The First Appellate Court on a proper appreciation of evidence, oral as well as documentary affirmed the finding recorded by the Court below that the execution of last will executed by Hironda Bai on 27-08-1984 was proved and dismissed the appeal.

(7) Shri Manoj Paranjpe, learned counsel for the appellant has urged that execution of will by Hironda Bai was not established and both the Courts below did not properly appreciate the evidence available on record and overlooked the material discrepancies therein. It was urged that the evidence led by the plaintiff revealed that Hironda Bai's thumb impression was obtained on the will dated 27-08-1984 after the attesting witnesses had signed the document. Reliance was placed on **Girja Datt Singh Vs. Gangotri Datt,** reported in **A.I.R.-1955-S.C.-346, H. Venkatachala Iyengar Vs. B.N.Thimmajamma and Others** reported in **A.I.R.-1959-S.C.-443** and **Kunwar Sai Vs. Baiya Bai** passed by this Court vide oral order dated 29-08-2006 in Second Appeal No.56 of 2006. A discrepancy whether the Will was written by pencil, pen or was typed was also pointed out. It was strongly urged that the execution of will as required by Section-63 of Indian Succession Act was not proved.

(8) Having considered the submissions of learned counsel for the appellant, I have perused the record. It is not disputed that the will dated 27-08-1984 bears the thumb impression of Hironda Bai. The said will is a registered document which strengthens the presumption of its authenticity.

(9) The scribe Bhagwat Prasad Tiwari was also examined by the defendant/appellant as D.W.-1. His testimony that he had written the will of Hironda Bai as told by her and had thereafter read over the same to Hironda Bai and that the attesting witnesses had signed after Hironda Bai had put her thumb impression on the will, is wholly unrebutted. Ganga Prasad, PW-2 an attesting witness was also examined by the plaintiff who has corroborated the testimony of Bhagwat Prasad by deposing that the document typed by Bhagwat Prasad was read over to Hironda Bai in presence of the Registrar and thereafter Hironda Bai had affixed her thumb impression on the will deed. Another witness Ram Singh Thakur DW-3 has also corroborated the above fact that the attesting witness had signed the will after it was read over to Hironda Bai who had affixed her thumb impression thereon. In this manner, there is overwhelming evidence on record which proves the authenticity of the will executed by Hironda Bai in favour of Sagnu Ram. The mere fact that in para-9 of the cross-examination of Sagnu Ram, it has emerged that Hironda Bai had signed the documents after the attesting witnesses had signed it would thus not be sufficient to discard the entire evidence available on record.

(10) Having thus considered the submissions of the learned counsel for the appellant and after perusal of the record of Civil Suit No.16-A/1988, I am of the considered opinion that both the Courts below have on a proper appreciation of evidence both oral as well as documentary available on record, recorded a finding that execution of registered will by Hironda Bai on 27-08-1984 in favour of Sagnu Ram was legally established.

(11) In this view of the matter, no substantial question of law arises for determination in this Second Appeal which is accordingly dismissed at the stage of admission. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge